

Section 421 - Right-of-Way Management

421.01 Findings and Purpose. The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested millions of dollars in public funds to build and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities are in most cases a necessary and proper use of right-of-way, the City must regulate and manage such uses.

To provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the rights-of-way, one of the causes for the early and excessive deterioration of its rights-of-way is frequent excavation.

This Section imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Section, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this Section provides for recovery of the City's costs associated with managing its rights-of-way.

421.02 Definitions. The following words, terms and phrases, as used herein, have the following meanings:

City Cost. The actual cost incurred by the City for public rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving facilities during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed; mapping of "as built" locations of facilities located in rights-of-way; and revoking right-of-way permits and performing all other tasks required by this Section, including other costs the City may incur in managing the provisions of this Section.

Degradation. The accelerated depreciation of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

Degradation Cost. Money paid to the City to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation.

Emergency. A condition that 1) poses a clear and immediate danger to life or health, or of a significant loss of property; or 2) requires immediate repair or replacement in order to restore service to a customer.

Equipment or Facilities. Any tangible thing in any right-of-way; but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.

Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Permit. A permit issued pursuant to this Section.

Permit Holder. Any person to whom a permit to excavate or place equipment or facilities in a right-of-way has been granted by the City under this Section.

Registrant. Any person who has or seeks to have its facilities or equipment located in any right-of-way.

Restore or Restoration. The process by which the right-of-way and surrounding area, including pavement and foundation, is returned to the condition that existed before the commencement of the work.

Restoration Cost. Money paid to the City by a permittee to cover the cost of restoration.

Right-of Way. The surface and space above and below a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements owned by the City for City utility purposes.

Service or Utility Service. Includes but is not limited to 1) those services provided by a public utility as defined in Minn. Stat. § 216B.02, Subds. 4 and 6; 2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy, or power services; 3) the services provided by a corporation organized for the purposes set forth in Minn. Stat. § 300.03; 4) the services provided by a district heating or cooling system; and 5) cable communications systems as defined in Minn Stat. Chap. 238.

Telecommunication Rights-of-Way User. A person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Section, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.

421.03 Registration.

Subd. 1 **Annual Registration Required.** No person shall construct, install, repair, remove, relocate or perform any work within any right-of-way without first being registered pursuant to this Subsection. Such registration shall be made on an application form provided by the Engineer and shall be accompanied by the registration fee provided in Section 185 of this Code. A service or utility service operating under a franchise with the City shall register pursuant to this Subsection but need not provide the registration information required by Subd. 2 of this Subsection if such information has been submitted pursuant to the franchise agreement. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from payment of a registration fee.

Subd. 2 **Registration Information.** The registrant shall provide the following at the time of registration and shall promptly notify the City of changes in such information:

- A. Registrant's name, address, telephone number, facsimile number and Gopher One-Call registration certificate number if required by State law.
- B. Name, address, telephone number, and facsimile number of the person responsible for fulfilling the obligations of the registrant.
- C. A Certificate of Insurance from a company licensed to do business in the State of Minnesota providing coverage in the following amounts.

GENERAL LIABILITY: Public Liability, including premises, products and complete operations.

Bodily Injury Liability	\$1,000,000 each person \$3,000,000 each occurrence
Property Damage Liability	\$3,000,000 each occurrence
Bodily Injury and Property and Damage Combined	\$3,000,000 single limit

COMPREHENSIVE: Automobile Liability Insurance, including owned, non-owned and hired vehicles

Bodily Injury Liability	\$1,000,000 each person \$3,000,000 each occurrence
Property Damage Liability	\$3,000,000 each occurrence
In lieu of 1) & 2) Bodily Injury and Property Damaged Combined	\$3,000,000 single limit

Such certificate shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (I) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of equipment or facilities in the right-of-way by the registrant its officers, agents, employees and permittees, including but not limited to, protection against liability arising from completed operations, damage of underground

equipment and collapse of property. Such certificate shall also name the City as an additional insured as to whom the coverage's required herein are in force and applicable and for whom defense will be provided as to all such coverage's. Such certificate shall require that the Engineer be notified 30 days prior to cancellation of the policy.

D. 24 hour emergency number.

E. An acknowledgment by the registrant of the indemnification pursuant to Subd. 2 of Subsection 421.18.

F. Such other information the City may require.

Subd. 3 **Exceptions.** The following are not subject to the requirements of this Subsection.

A. Persons planting or maintaining boulevard plantings or gardens.

B. Persons erecting fences, installing driveways, sidewalks, curb and gutter, or parking lots.

C. Persons engaged in snow removal activities.

D. Persons installing street furnishing, bus stop benches and shelters.

E. Persons installing vending machines.

F. Persons installing irrigation systems.

G. Federal, State, County, and City agencies.

H. Persons installing pet containment systems.

I. Plumbers licensed in accordance with Section 440 of this Code.

J. Persons acting as agents, contractors or subcontractors for a registrant who has properly registered in accordance with this Subsection 421.03.

Subd. 4 **Term.** Registrations issued pursuant to this Section shall expire on September 1 of each calendar year.

421.04 Permit Required; Bond; Exceptions. No person shall excavate, dig, tunnel, trench, or install any facilities, equipment or improvements above, on, or beneath the surface of any right-of-way in the City or any property owned by the City without first obtaining a permit pursuant to this Subsection.

Subd. 1 **Application; Fee.** An application for a permit shall be made on forms provided by the Engineer and shall be accompanied by the fees set forth in Section 185 of this Code which are established to reimburse the City for City costs. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from

the payment of permit fees. If the work is to be performed by an agent, contractor or subcontractor on behalf of a registrant, such application shall be signed by the registrant. The application shall also be accompanied by the following:

- A. Scaled drawings showing the location of all facilities and improvements proposed by the applicant.
- B. A description of the methods that will be used for installation.
- C. A proposed schedule for all work.
- D. The location of any public streets, sidewalks or alleys that will be temporarily closed to traffic during the work.
- E. The location of any public streets, sidewalks or alleys that will be disrupted by the work.
- F. A description of methods for restoring any public improvements disrupted by the work.
- G. Any other information reasonably required by the Engineer.

Subd. 2 **Security.** For companies not operating under a franchise with the City, a surety bond, letter of credit or cash deposit in the amount determined by the Engineer but not less than \$5,000, shall be required from each applicant. A surety bond shall be from a corporate surety authorized to do business in the State. Security required pursuant to this Subd. 2 shall be conditioned that the holder will perform the work in accordance with this Section and applicable regulations, will pay to the City any costs incurred by the City in performing work pursuant to this Section; and will indemnify and save the City and its officers, agents and employees harmless against any and all claims, judgment or other costs arising from any excavation and other work covered by the permit or for which the City, Council or any City officer may be liable by reason of any accident or injury to persons or property through the fault of the permit holder, either in improperly guarding the excavation or for any other injury resulting from the negligence of the permit holder. The bond, letter of credit or cash deposit shall be released by the City upon completion of the work and compliance with all conditions imposed by the permit. For permits allowing excavations within public streets, such bond, letter of credit or cash deposit shall be held for a period of 24 months to guaranty the adequacy of all restoration work.

Subd. 3 **Permit Issuance; Conditions.** The Engineer shall grant a permit upon finding the work will comply with applicable sections of this Code. The permit shall be kept on the site of the work while it is in progress, in the custody of the individual in charge of the work. The permit shall be exhibited upon request made by any City official or police officer. The Engineer may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and

inconvenience to the traveling public. No permit shall be issued to anyone who has failed to register in accordance with Subsection 421.03.

Subd. 4. **Exceptions.** No permit shall be required for the following:

- A. Landscaping work
- B. Fences, driveways, sidewalks, curb and gutter, and parking lots, street furnishings, bus stop benches, shelters, posts and pillars
- C. Snow removal activities
- D. Vending machines
- E. Irrigation systems provided that the system does not connect directly to water mains in the right-of-way
- F. Activities of the City
- G. Installation and maintenance of sewer or water services provided that no excavation or other work is done within a street, sidewalk or alley and all work is confined to unimproved portions of rights-of-way or easements.

421.05 Diligence in Performing Work. Work shall progress in an expeditious manner as reasonably permitted by weather conditions until completion in order to avoid unnecessary inconvenience to traffic. In the event that the work is not performed in accordance with applicable regulations pertaining to excavations and utility connections, or the work is not done in an expeditious manner, or shall cease or be abandoned without due cause, the City may, after 72 hour notice to the permit holder, correct the work and fill the excavation or repair the street. The entire cost of such work shall be paid by the permit holder upon demand made by the City.

421.06 Standards During Construction or Installation. The permit holder shall comply with the following standards when engaging in the work:

- A. City and take such precautions as are necessary to avoid creating unsanitary conditions. Observe and comply with all laws, rules and regulations of the State and
- B. Conduct the operations and perform the work in a manner as to ensure the least obstruction and interference to traffic.
- C. Take adequate precautions to ensure the safety of the general public and those who require access to abutting property.
- D. If required by the Engineer, notify adjoining property owners prior to the commencement of work which may disrupt the use of and access to such adjoining properties.
- E. In all cases where construction work interferes with the normal use of the construction area, provide for closing the construction area to traffic or to afford it

restricted use of the area and comply with MUTCD traffic safety signing requirements.

F. Exercise precaution at all times for the protection of persons, including employees and property.

G. Protect and identify excavations and work operations with barricade flags, and if required, by flagmen in the daytime, and by warning lights at night.

H. Provide proper trench protection as required by O.S.H.A. when necessary and depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation.

I. Protect the root growth of trees and shrubbery.

J. Installation of pipe (utility conductors) under Portland Cement Concrete, asphalt concrete, or other high-type bituminous pavements shall be done by jacking, auguring or tunneling as directed by the Engineer unless otherwise authorized. HDPE sleeving shall be an acceptable casing or sleeving material for telecommunications installations.

K. When removing pavement of Portland Cement Concrete, asphalt concrete or high-type built-up bituminous surfacing, the pavement shall be removed on each side of the trench or excavation a distance of nine inches beyond the trench width and length, in order to provide a shoulder and solid foundation for the surface restoration.

L. To obtain a straight edge and neat-appearing opening in pavement surfaces, the following procedure is required:

1. Portland Cement Concrete Pavement - The surface shall be saw-cut scored two inches deep and the concrete broken out by sledge or pneumatic hammer chisel.
2. Asphalt Concrete - The surface shall be cut full depth by pneumatic hammer chisel.

M. Excavations, trenches and jacking pits off the roadway or adjacent to the roadway or curbing shall be sheathed and braced depending upon location and soil stability, and as directed by the City.

N. Excavations, trenches and jacking pits shall be protected when unattended to prevent entrance of surface drainage.

O. All backfilling must be placed in six inch layers at optimum moisture and compacted with the objective of attaining 100 percent of AASHTO density. Compaction shall be accomplished with hand, pneumatic or vibrating compactors as appropriate.

P. Backfill material shall be Class 5, or better in the judgement of the Engineer. The engineer may permit backfilling with the material from the excavation provided such material is granular in nature and acceptable to the Engineer.

Q. Compacted backfill shall be brought to street grade and crowned at the center not more than one inch.

R. Street and pedestrian traffic shall be maintained throughout construction unless provided otherwise by the permit.

S. No lugs damaging to roadway surfaces may be used.

T. Dirt or debris must be periodically removed during construction.

U. Other reasonable standards and requirements of the Engineer.

421.07 Repair and Restoration.

Subd. 1 **Schedule.** The work to be done under the permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permit holder, when work was prohibited as unseasonal or unreasonable or when extended by the Engineer. In addition to repairing its own work, the permit holder must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the condition that existed before the commencement of the work but only to the extent the permit holder disturbed such surrounding areas.

Subd. 2 **General Standards.** The permit holder shall perform repairs and restoration according to the standards and with the materials specified by the Engineer. The Engineer shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Engineer in exercising this authority shall be guided by the following standards and consideration:

A. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way.

B. The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;

C. The pre-excavation condition of the right-of-way; the remaining life-expectancy of the right-of-way affected by the excavation;

D. Whether the relative cost of the method of restoration to the permit holder is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and

E. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

Subd. 3 **City Restoration.** The permit holder may request that the City restore the right-of-way. The permit holder shall pay to the City, in advance, a cash deposit equaling 150% of the estimated restoration cost. The restoration cost shall be estimated by the Engineer and shall include an estimate of the degradation cost. The estimate of the degradation cost shall be based upon criteria adopted by the Minnesota Public Utilities Commission. Following completion of the restoration, any funds in excess of the actual restoration cost and the degradation cost shall be returned to the permit holder.

Subd. 4 **Guarantees.** The permit holder shall guarantee its work and shall maintain it for twenty-four (24) months following its completion. During this twenty-four month period it shall, upon notification from the Engineer, promptly correct all restoration work to the extent necessary, using the method required by the Engineer.

421.08 Permit Limitations. Permits issued pursuant to this Section are valid only for the area of the right-of-way specified in the application and the permit and only for the dates so specified. No work shall be extended beyond the permitted area or dates without a new permit being procured therefore, provided the Engineer may extend the completion date of the work in accordance with Subd. 1 of Subsection 421.07.

421.09 Denial of Permit. The Engineer may deny a permit due to the following:

- A. Failure to register pursuant to Subsection 421.03.
- B. A proposed excavation within a street or sidewalk surface that has been constructed or reconstructed within the preceding five years unless the Engineer determines that no other locations are feasible or when necessitated by an emergency.
- C. The applicant is subject to revocation of a prior permit issued pursuant to this Section.
- D. The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival or any other similar event.
- E. The right-of-way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right-of-way as provided in Subd. 3 of Subsection 421.14.
- F. Businesses or residences in the vicinity will be unreasonably disrupted by the work.
- G. The proposed schedule conflicts with scheduled total or partial reconstruction of the right-of-way.

H. The applicant fails to comply with the requirements of this Section or other Sections of this Code.

421.10 Emergency Work. A registrant may proceed to take whatever actions are necessary to respond to an emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Section for the actions it took in response to the emergency.

If the Engineer becomes aware of an emergency, the Engineer shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the Engineer may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities or equipment occasioned the emergency.

421.11 Revocation of Permits. The Engineer may revoke any permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, this Code, rule or regulation, or any condition of the permit which substantial breach shall continue uncured for 10 calendar days after the issuance of a written order of the Engineer. A substantial breach of a permit holder shall include, but shall not be limited to, the following:

- A. The violation of any material provision of the permit;
- B. An evasion or attempt to evade any material provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- C. Any material misrepresentation of fact in the application for a permit;
- D. The failure to maintain the required bonds and insurance;
- E. The failure to complete the work in a timely manner; or
- F. The failure to correct a condition indicated on an order issued by the Engineer.

421.12 Appeal.

Subd. 1 **Filing of Appeal.** Any person aggrieved by, i) the denial of a permit application, ii) the denial of a registration, iii) the revocation of a permit or, iv) the application of the fee schedule imposed by Section 185 of this Code may appeal to the Council by filing a written notice of appeal with the Clerk. Said notice must be filed with 20 days of the action causing the appeal.

Subd. 2 **Notice of Hearing.** The Council shall hear the appeal not later than 30 days after the date the appeal is filed. Notice of the date, time, place, and purpose of the hearing shall be mailed to the appellant not less than 10 days before the date of the hearing.

Subd. 3 **Hearing and Decision.** The Council shall, at such hearing, hear and consider any evidence offered by the appellant, the Engineer, and anyone else wishing to be heard.

After hearing the oral and written views of all interested persons, the Council shall make its decision at the same meeting or at a specified future meeting.

421.13 Mapping. Within 120 days following completion of any work pursuant to a permit, the registrant shall provide the Engineer accurate maps and drawings certifying the “as-built” location of all facilities and equipment installed, owned and maintained by the registrant. Such maps and drawings shall indicate both the horizontal and vertical location of all facilities and equipment and shall be provided in a format consistent with the City’s electronic mapping system. Failure to provide maps and drawings in accordance with this Subsection shall be grounds for revoking the permit holder’s registration.

421.14 Location of Facilities and Equipment.

Subd. 1 **Undergrounding by Telecommunications Right-of-Way Users.** Any new construction and the installation of new equipment and replacement of old equipment of telecommunication right-of-way users shall be underground or contained within buildings or other structures in conformity with applicable codes. Provided, telecommunications right-of-way users may attach equipment and facilities to existing poles and structures maintained by a service or utility service.

Subd. 2 **Corridors.** The Engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of equipment that is or, pursuant to current technology, the Engineer expects will someday be located within the right-of-way. All permits issued by the Engineer involving the installation or replacement of equipment shall designate the proper corridor for the equipment at issue.

Subd. 3 **Limitation of Space.** To protect health and safety, the Engineer shall have the power to prohibit or limit the placement of new or additional equipment within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the Engineer shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public’s needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing equipment in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

421.15 Relocation.

Subd. 1 **Relocation for City Purposes.** A registrant shall promptly but in no event more than 120 days of the City’s request, permanently remove and relocate at no charge to the City, any facilities or equipment if and when made necessary by a change in the grade, alignment or width of any right-of-way, by the construction, maintenance or operation of any City facilities or to protect the public health, safety and welfare. The registrant shall restore any rights-of-way to the condition it was in prior to removal and relocation.

Subd. 2 **Undergrounding of Relocated Telecommunications Facilities.** A telecommunications right-of-way user shall relocate all above ground facilities and equipment to underground locations at its own cost and expense at the City’s request

when, i) the City requires the relocation of all telecommunications facilities and equipment to underground locations or ii) structures or poles to which the registrant's facilities or equipment is attached are abandoned or removed by the owner of such structures or poles.

421.16 Right-of-Way Vacation.

Subd. 1 Reservation of Right. If the City vacates a right-of-way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant facilities and equipment, the City shall reserve, to and for itself and all registrants having facilities and equipment in the vacated right-of-way, the right to install, maintain and operate any facilities and equipment in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.

Subd. 2 Relocation of Equipment. If the vacation requires the relocation of registrant facilities and equipment; and (a) if the vacation proceedings are initiated by the registrant, the registrant must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the registrant must pay the relocation costs unless otherwise agreed to by the City and the registrant; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, such other person or persons must pay the relocation costs.

421.17 Abandoned and Unusable Equipment.

Subd. 1 Discontinued Operations. A registrant who has determined to discontinue its operations in the City must either:

A. Provide information satisfactory to the Engineer that the registrant's obligations for its equipment in the right-of-way under this Section have been lawfully assumed by another registrant; or

B. Submit to the Engineer an action plan for the removal or abandonment of equipment and facilities. The Engineer shall require removal of such facilities and equipment if the Engineer determines such removal is necessary to protect the public health, safety and welfare. The Engineer may require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and equipment.

Subd. 2 Abandoned Facilities Equipment. Facilities and equipment of a registrant located on the surface of or above a right-of-way or on City property which, for two years, remains unused shall be deemed to be abandoned. Such abandoned equipment is deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, i) abating the nuisance, or ii) requiring removal of the equipment or facilities by the registrant, or the registrant's successor in interest.

Subd. 3 Removal of Underground Equipment. Any registrant who has unusable and abandoned underground facilities or equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, to the extent such facilities or

equipment is uncovered by such excavation unless this requirement is waived by the Engineer.

421.18 Indemnification and Liability.

Subd. 1 **Limitation of Liability.** By reason of the acceptance of a registration or the grant of a right-of-way permit, the City does not assume any liability (a) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.

Subd. 2 **Indemnification.** By registering with the Engineer, a registrant agrees, or by accepting a permit under this Section, a permit-holder is required, to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of its equipment, or any activity undertaken in or near a right-of-way, whether or not the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said equipment by the registrant or on the registrant's behalf, including but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the City; and the registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

421.19 Franchise Holders. If there is a conflict in language between the franchise of a person holding a franchise agreement with the City and this Section, the terms of the franchise shall prevail.

History: Ord 1997-7 adopted 8-18-97

Cross Reference: Section 185